

## MEMORANDUM

DATE: January 30, 2008

TO: Ms. Sharon L. Summers, DSS  
Policy, Program and Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 11 DE Reg. 872 [DSS Food Stamp Child Support Cooperation Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Food Stamp Program regulations regarding the child support provisions. The regulations were published as 11 DE Reg. 872 in the January 1, 2008 issue of the Register of Regulations. As background, The U.S. Department of Agriculture (USDA) offers states the option of requiring parents/caretakers to cooperate with the state's child support agency as a condition of receiving Food Stamps. The Division of Social Services (DSS) already requires such cooperation as a condition of participation in the TANF and child care programs. It now proposes to adopt the USDA option of requiring such cooperation as a condition of participation in the Food Stamp program. SCPD has the following observations.

First, there are pros and cons to requiring parents to cooperate with the Division of Child Support Enforcement (DCSE) to pursue child support. The attached article describes some negative concerns linked to New York City's requirement of child support cooperation as a prerequisite to participation in its child care subsidy program. The article notes that low income beneficiaries risk losing their jobs if they must take time off to participate in court proceedings. Moreover, immigrants often fear any involvement in the court system and that anxiety may prompt them to forego Food Stamps. On the positive side, DSS posits that the requirement "will help facilitate the client towards self-sufficiency" and "may uncover unreported income". At p. 873. Reasonable persons may differ on whether the pros outweigh the cons of this initiative.

Second, consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of “domestic violence” is broader:

For purposes of this provision, the term “domestic violence” means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

[emphasis supplied]

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse and merits amendment.

Third, the federal regulation requires Delaware to waive the normal DCSE fees and costs of services if DSS implements this option. See attached 7 C.F.R. 273.11(o)(4). Consistent with the attached excerpt from the DCSE application, there is a \$25 annual processing fee which would ostensibly be precluded by the federal regulation. The DSS regulation should ensure conformity with 7 C.F.R. 273.11(o)(4) by including a recital that the DCSE shall not require payment of a fee or other cost for services from Food Stamp beneficiaries.

Fourth, the DSS regulation makes DCSE the final decision-maker of “good cause for refusing to cooperate” [§9094, Good Cause Determination] . In contrast, the federal regulations envision DSS as the final decision-maker with DCSE merely providing input:

(iii) Review by the State Child Support or TANF Agency. Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendations from the State Child Support or TANF agency.

7 C.F.R. 273.11(o)(2)(iii). See also 7 C.F.R. 273.11(o)(2) [“Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:...”]

Fifth, the DSS regulation ostensibly limits aggrieved Food Stamp beneficiaries to a DCSE hearing. See §9094, Administrative Hearing. Since DSS is the final decision-maker, the aggrieved Food Stamp beneficiary should be entitled to a DSS fair hearing authorized by 16 DE Admin Code 5000 and 9090.5.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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